

STATE OF NEW MEXICO  
(ON RECONSIDERATION)

IBLA 75-582

Decided October 21, 1980

Appeal from decision of New Mexico State Office, Bureau of Land Management, rejecting indemnity school land selection application NM 18723.

State of New Mexico, 24 IBLA 135 (1976) is vacated; case remanded for determination of values of base and selected lands.

1. Lieu Selections--School Lands: Indemnity Selections

The "grossly disparate value policy," under which the Department rejects States applications for lands in lieu of lands lost from their school grants by reason of settlements, etc., under 43 U.S.C. §§ 851, 852 (1976), where the value of the selected lands grossly exceeds the value of the lost base lands, is a lawful exercise of the Secretary's power and a valid ground to reject such an application. Accordingly, where the record indicates that the selected lands may be much more valuable than the base lands, the matter will be remanded to BLM for a determination of such values.

APPEARANCES: William O. Jordan, Esq., for the Commissioner of Public Lands, State of New Mexico; William G. Kelly, Jr., Esq., Office of the Solicitor, U.S. Department of the Interior, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

On June 5, 1973, the State of New Mexico (New Mexico) filed indemnity school land selection application NM 18723 for 148.47 acres (selected lands) as indemnity for 148.47 acres of lands (base lands) lost from its grant for common schools due to relinquishment deeds. This application was filed pursuant to the provisions of sections 2275 and 2276 of the Revised Statutes, as amended, 43 U.S.C. §§ 851, 852

(1976), with the New Mexico State Office, Bureau of Land Management (BLM).

On March 25, 1975, BLM requested that the Area Geologist, Geological Survey (GS), Roswell, New Mexico, file a report "as to the mineral and water resources" of the base and selected lands. The base lands consist of three parcels, two of which are contiguous and one of which is separated from these two by a substantial distance. 1/ The selected lands consist of one parcel. 2/

On April 14, 1975, GS reported that all of the base lands "are valuable for oil and gas" and "are also valuable for salt." GS reported that the selected lands are "valuable for oil and gas, and [are] in an area of active oil and gas production," noting that "[t]he South Salt Lake Known Geologic Structure (defined and undefined additions) is in the adjacent section [of the neighboring township], and the Lynch KGS is [in the next adjacent section]." 3/ Moreover, GS reported that the selected lands are within the June 5, 1974, addition to the Secretary's Known Potash Area, and that New Mexico's exercise of surface rights would unreasonably interfere with potash operations under the mineral leasing laws.

On April 23, 1975, BLM issued a decision rejecting New Mexico's application, in view of the facts reported by GS. BLM also noted that the selected lands were included in E.O. Withdrawal NM 1, Potash Reserve of March 11, 1926, which was still in effect. Subsequently, New Mexico tendered a waiver of all potash and sodium mineral rights to BLM in an effort to overcome its objection to New Mexico's selecting lands within a known potash area. On May 23, 1975, BLM advised New Mexico that it could not accept its mineral waiver, as under 43 CFR 2093.0-3(a), it may accept nonmineral applications for valuable mineral land only where GS has determined that the disposal of these lands pursuant to the nonmineral application will not unreasonably interfere with mineral leasing. As GS had expressly found to the contrary, BLM held it could not accept the application.

On May 23, BLM also advised New Mexico that it could not accept its application if the value of the selected lands greatly exceeds the value of the base lands, thus describing the so-called "disparate

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1/ The three base land parcels are SE 1/4 SE 1/4 sec. 12, T. 11 N., R. 27 E., New Mexico principal meridian; NE 1/4 NW 1/4 and Lot 4, sec. 13, T. 11 N., R. 27 E., New Mexico principal meridian; and Lots 1 and 2, sec. 22, T. 12 N., R. 29 E., New Mexico principal meridian. These parcels were patented, respectively, by Relinquishment Deeds 3120, 3130, and 1256.

2/ The selected lands parcel is Lots 3, 4, 5, and 6, sec. 6, T. 21 S., R. 33 E., New Mexico principal meridian.

3/ The record indicates that the South Salt Lake Known Geologic Structure is apparently in sec. 1, T. 21 S., R. 32 E., New Mexico principal meridian and the Lynch KGS in sec. 2 of this township.

value policy." BLM noted that there was active oil and gas production and a known geologic structure (KGS) adjacent to the selected lands, but that the production nearest the base lands is several townships away. Accordingly, it advised New Mexico that, while the land values have not been precisely determined, it appeared from these facts that the values of the base and selected lands were "grossly disparate," in that the selected lands were probably more valuable than the base lands.

New Mexico filed a timely notice of appeal of BLM's rejection of its application, and, on March 8, 1976, we issued a decision setting aside BLM's decision and remanding the matter. State of New Mexico, 24 IBLA 135 (1976). In this decision, we rejected BLM's application of the "grossly disparate value" policy, holding that a discrepancy in value, even if substantial, did not justify rejecting a state selection application. We also held that BLM should reevaluate New Mexico's application in light of our determination that New Mexico was entitled to select these lands, even though they were mineral in character, as the selection was being made as indemnity for mineral lands lost to New Mexico, citing the provisions of 43 U.S.C. § 852(a)(1) (1970). Finally, we held that the fact that the selected lands were within a potash withdrawal could not bar New Mexico's selection, even though the potash rights were reserved to the United States and were not available for transfer, as New Mexico had offered to waive potash rights and to allow surface use of the lands to the extent necessary to develop and remove potash there. We also concluded that 43 CFR 2093.0-3(a) does not bar the acceptance of this proposed waiver.

On May 27, 1976, BLM, through the Solicitor, filed a petition for reconsideration of this decision, pointing out that the "grossly disparate value" policy, which we had not recognized in State of New Mexico, *supra*, had been established by the Secretary, and that its validity was then being litigated. Under this policy, the Department refuses to approve state school indemnity selection applications for lands having values grossly in excess of the lost school lands. BLM noted that its present policy was to suspend consideration of such applications pending judicial resolution of this question.

BLM also pointed out that, under 43 U.S.C. § 852(d)(1) (1970), a state may select lands even though withdrawn for potash and indicated that it regarded as incorrect our statement that the potash rights were not available for transfer to New Mexico owing to this withdrawal. Thus, BLM's position was apparently that New Mexico could select these potash lands, including potash rights, in lieu of lost school lands, subject to the restrictions set out in 43 U.S.C. § 852(a) (1970), provided that the value of these potash lands was not grossly in excess of the value of the lost base lands.

On June 2, 1976, we issued an order granting BLM's petition for reconsideration, noting that it had referred to matters of law and Departmental policy which were not considered in State of New Mexico,

supra. Accordingly, we suspended that decision to await the outcome of the ongoing litigation. In view of misstatements of present legal principles in State of New Mexico, 24 IBLA 135 (1975), we vacate that decision in its entirety.

[1] The propriety of the Department's imposing the so-called "grossly disparate value policy" described above has been fully litigated, and the United States Supreme Court reversed the Tenth Circuit and held that this policy is a lawful exercise of the Secretary's power. Andrus v. Utah, 48 U.S.L.W. 4562 (May 19, 1980). Accordingly, as the record indicates that there may be a gross disparity between the values of the lost base lands and the selected lands, it is appropriate to remand the matter to BLM to make findings as to these respective values. If these values are in fact grossly disparate, BLM will have a valid basis for refusing to accept New Mexico's application. Andrus v. Utah, supra.

In view of our holding here, it is unnecessary at present to consider whether New Mexico is entitled to these selected lands, which are "mineral in character" (being within a potash withdrawal and adjacent to active oil and gas production and a KGS) by virtue of having lost "mineral" base lands (which lands according to GS, are valuable for oil and gas and for salt) without considering the comparative degrees of mineralization of the base and selected lands; (see State of California, 33 IBLA 160 (1977)) or whether New Mexico may acquire these selected lands in toto even though the rights to potash thereon have been reserved to the United States (see 43 U.S.C. § 852(d)(1) (1976)). These questions will be mooted if BLM determines that the value of the selected lands is grossly in excess of the value of the base lands.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is remanded to BLM for a determination of the respective values of the base and selected lands and further action as appropriate.

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Edward W. Stuebing  
Administrative Judge

We concur:

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Douglas E. Henriques  
Administrative Judge

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Joseph W. Goss  
Administrative Judge

